

BOARD OF APPEALS CASE NO. 5060

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BEFORE THE

APPLICANT: Ronald Fletcher

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to permit
construction services and the storage of
commercial vehicles in the Agricultural
District; 2043 Mt. Horeb Road, Street**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/20/00 & 9/27/00

HEARING DATE: October 25, 2000

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Record: 9/22/00 & 9/29/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Ronald F. Fletcher, is requesting Special Exceptions pursuant to Sections 267-53D(1) and 267-53H(1) of the Harford County Code to allow commercial vehicle and equipment storage, as well as construction services, in an Agricultural District.

The subject property is located at 2043 Mt. Horeb Road, Street, in the Fourth Election District. The parcel is more specifically identified as Parcel 83, in Grid 3A, on Tax Map 16. The property contains approximately 1.40 acres, with the Applicant having contracted to purchase an additional adjacent parcel approximately 26,327 square feet in size. Completion of the sale of the additional parcel will bring the total acreage to approximately 2 acres, all of which is zoned AG Agricultural.

Prior to the start of testimony at the hearing, People's Counsel appeared and indicated that he represented several neighbors who would not oppose the Applicant's request if special exception approval were granted provided that such approval was subject to certain conditions or restrictions. These proposed conditions were placed on the record and agreed to by the Applicant. The proposed conditions were subsequently documented in a written agreement between the Applicant and the represented neighbors and submitted to the Hearing Examiner for inclusion in the file.

Case No. 5060 - Ronald Fletcher

The Applicant, Ronald Fletcher, and his wife, Angela Fletcher, appeared and indicated that Mrs. Fletcher was authorized and would testify on behalf of the Applicant. Mrs. Fletcher testified that she and her husband have been married since 1992 and, although they have lived together at the subject property since their marriage, her name has not yet been placed on the deed. However, she testified that her name will be placed on the deed in the near future and both she and her husband are purchasing the additional parcel necessary to bring the subject property up to the minimum two acres required for the requested special exception.

According to Mrs. Fletcher, the Applicant has been operating his plumbing services and supplies business since 1984, in the same manner as testified to at the hearing. This business is essentially a one-man operation, with no employees other than the Applicant and no intent to expand or enlarge the business. Mr. Fletcher runs the business out of their home on the subject property, which is located in a rural residential neighborhood. There are no signs for the business on the property, no advertising done on premises, and no retail sales. The plumbing business involves primarily residential work, with only occasional small commercial jobs. The equipment owned and utilized by the Applicant for the business, all stored on the subject property, includes one dump truck, a low-boy trailer, a step van, a backhoe and a pickup truck which the Fletchers also use for personal transportation. Mrs. Fletcher indicated that the backhoe is often left at the job site, and it is usually scheduled so that it can be moved directly from one job to the next, without having to be stored on the subject property.

Mrs. Fletcher further testified that there is a minimal amount of plumbing supplies and materials stored on the property, and what is kept on premises is stored in an enclosed shed. There are no large truck deliveries to the property, only UPS deliveries. Large items used in the business, such as water heaters and such, are usually delivered directly to the job site. Mrs. Fletcher noted that the equipment and materials are not visible from the roadway, and that additional trees will be planted to fully screen the parking area for the equipment, located behind the house to the rear of the subject property, from the neighboring properties.

Case No. 5060 - Ronald Fletcher

Mrs. Fletcher further testified that there is more than a ten (10) foot buffer around the storage area, so that the code requirements for the special exception will be met. The Fletchers are prepared to execute the deed for the purchase of the additional parcel to achieve the two-acre minimum required upon approval of the special exception request.

The Applicant, Ronald Fletcher, appeared and testified that he agreed with the testimony of his wife and that he agreed and was prepared to plant additional trees to screen the storage area from the neighboring lots and would execute the necessary deed as soon as possible following approval of the request. He also indicated that he only used the dump truck about once a week. While some loading and unloading of his commercial vehicles would occur in the driveway of the home, he would make every effort not to leave these vehicles in the driveway for any longer than necessary, and would make sure they were stored in the proper location to the rear of the parcel. He indicated that he would abide by those conditions or restrictions outlined by the Peoples' Counsel at the start of the hearing if the request is approved.

Mr. Donald Hanky, 2027 Mt. Horeb Road, Street, was next to testify. Mr. Hanky indicated that the subject parcel is located in a mixed-use neighborhood, with other properties using and storing agricultural equipment not much different from the equipment used by the Applicant. Mr. Hanky was not opposed to the Applicant's request.

Mr. Carroll Kreusinger, 4639 Norrisville Road, White Hall, testified that he owns the property at 2023 Mt. Horeb Road, near the Applicant, and he also did not oppose the request.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the Department recommends approval of the special exception, subject to certain conditions, including but not limited to, the recording of a deed for an additional parcel which would bring the size of the subject property up to the required two acres, the filing of a detailed site plan for review by the Development Advisory Committee, and the obtaining of all necessary inspections and permits. Mr. McClune indicated that it is the Department's opinion that the Applicant can meet or exceed all criteria for the special exceptions set forth in the Code, and that the scale and scope of the Applicant's operation is consistent with the neighborhood.

Case No. 5060 - Ronald Fletcher

According to Mr. McClune, the Applicant's use would have no greater impact at the subject location than it would anywhere else in the agricultural zone. Mr. McClune further noted that the Department would support the additional conditions outlined at hearing if the request is approved.

No witnesses testified in opposition to the request.

CONCLUSION:

The Applicant is requesting Special Exceptions pursuant to Sections 267-53D(1) and 267-53H(1) of the Harford County Code.

Section 267-53D(1) provides:

“Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:

- (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.
- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
- (c) A minimum parcel area of two (2) acres shall be provided.”

Section 267-53H(1) provides:

“Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.”

Case No. 5060 - Ronald Fletcher

In addition to the specific requirements of the Code, a Special Exception may not be granted unless consideration is given to the “Limitations, Guides and Standards” set forth in Section 267-9I of the Code, which states:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

Case No. 5060 - Ronald Fletcher

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
- (10) The preservation of cultural and historic landmarks.”**

The evidence presented at hearing on the matter demonstrates that the subject property is located in an Agricultural District which has maintained its rural character despite the fact that many of the residential lots are under two acres in size. The Applicant’s use, a plumbing business run out of the Applicant’s home, has been in operation for many years and appears to be consistent and compatible with the residential and other agricultural uses in the immediate neighborhood. Little business is actually performed on site, with that being limited generally to loading, unloading, and storage of vehicles used in the business, as well as storage of a small amount of plumbing supplies and materials which are contained within a storage shed. There was no evidence to suggest that the proposed use would negatively impact traffic, the orderly growth of the neighborhood, or the environment. With the exception of the noise or fumes from the startup and running of vehicles, which is comparable to that generated by farm tractors and other agricultural machinery, it does not appear that there will be any odors, dust, gas, smoke, vibration or glare generated by the operation. The operation of the business would not appear to interfere with the quality of life in the neighborhood, and any minor annoyances should be able to be addressed by the planting of additional trees and other conditions which will be outlined below.

The Maryland Court of Appeals, in addition to the specific requirements for a special exception use has set forth the basic test in such cases. As stated in Schultz v Pritts, 291 Md. 1, 432 A.2d 1319 (1981):

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge *whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case in is harmony with the general purpose and intent of the plan.*” (Emphasis added)

It is clear from the evidence presented that the proposed use will have no adverse

Case No. 5060 - Ronald Fletcher

impacts at this location above and beyond those normally associated with such a use, regardless of its location within the agricultural zone. Consequently, the Hearing Examiner recommends approval of the requested Special Exceptions, subject to the following conditions:

1. The Applicant shall prepare and submit a detailed site plan to be reviewed through the Development Advisory Committee (DAC);
2. The Applicant shall obtain all necessary permits and inspections for the use;
3. Within 60 days of the date this decision becomes final and prior to a zoning permit being issued, the Applicant shall record a deed incorporating an additional parcel totaling no less than 26,327 square feet to the subject property;
4. Wheeled or tracked vehicles to be parked on the Applicant's property shall be limited to the following: one single axle GMC dump truck with company logo; one heavy equipment (low-boy) trailer; one backhoe; one Chevrolet step van with company logo; and one GMC pick-up truck. The Applicant shall be permitted to replace these listed vehicles with vehicles of similar size and type;
5. All vehicles and related equipment are to be parked to the rear of the Applicant's residence on the paved parking area, as shown on the Applicant's plot plan contained within the file;
6. The Applicant shall be permitted to store an additional tracked or wheeled vehicle in the parking area for no more than 48 hours, in order to accommodate the occasional rented vehicle;
7. Vehicles shall not be parked or stored on the driveway abutting the Trostle property (2047 Mt. Horeb Road), except tracked or wheeled equipment which must be loaded or unloaded on the driveway, and such equipment may be left in the driveway overnight on those occasions when the Applicant returns at night and it is unsafe to back down, or unload on, the driveway;
8. All plumbing supplies, tools and other equipment shall be stored within an enclosed building;

Case No. 5060 - Ronald Fletcher

9. The Applicant shall plant an additional staggered row of trees on the Trostle side (2047 Mt. Horeb), similar in appearance and size, and parallel, to the existing trees, beginning at the end of the Trostle's split rail fence, and ending at the Fletcher barn.
10. Upon the sale, lease or transfer of the subject property and/or business, this special exception approval shall terminate.

Date DECEMBER 19, 2000

**Valerie H. Twanmoh
Zoning Hearing Examiner**